

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

OHIO POWER COMPANY¹

Employer

and

Case No. 8-RC-17052

**LOCAL UNION NO. 696 of the
INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO²**

Petitioner

DECISION AND ORDER

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.³

INTRODUCTION

Ohio Power Company, an Ohio corporation, with a principal place of business located at 47687 National Road, St. Clairsville, Ohio, 43950⁴ operates as a public utility company engaged in the generation, transmission, distribution and sale of electricity. Ohio Power Company is one of several electric power companies that are a part of the American Electric Power (AEP) system.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction. The labor organization involved claims to represent certain employees of the Employer. The Petitioner and the Employer filed post-hearing briefs which have been duly considered. With its brief, the Employer also submitted and proffered as evidence, an affidavit signed by Donald Richard Sloas, an Operations Manager for its parent company. Since the record is closed, the Sloas affidavit was not received into evidence nor were its contents considered in deciding the instant issues.

⁴ The St. Clairsville, Ohio, facility is also referred to as Belmont, Ohio. The Employer also operates facilities in Steubenville and East Liverpool, Ohio. No employees are currently stationed at the East Liverpool, Ohio, facility.

As described in a current collective bargaining agreement between the Parties, effective from February 17, 2009 through February 16, 2012 and covering the facilities at issue in this proceeding, the Petitioner currently represents employees of the Employer in the following bargaining unit:

Line Mechanics, Street Lights Attendants, Driver-Ground Workers, Ground Workers, Station Electricians, Meter Electricians, Meter Servicer, Line Servicer, Station Servicer, Storekeeper, Stores Attendant A, Stores Attendant B, Meter Reader, Meter Specialist, Fleet Technicians, Building Maintenance Mechanic A and Building Maintenance Mechanic B, but excluding collectors, engineers' assistants, T & D planners, storekeepers senior, full time crew supervisors (NE), office and clerical employees, trouble dispatchers, meter clerks, meter record clerks, stores record clerks, professional, technical and managerial employees, employees in specific temporary jobs, employees with less than six-months' service, guards and all supervisors as defined in the Act.

Although they are specifically excluded in the foregoing unit description, the Petitioner seeks to include all employees in the job classification of "storekeepers senior" in that preexisting unit by way of an Armour-Globe⁵ election. In the alternative, the Petitioner seeks an election in a separate bargaining unit described as follows:

All Storekeepers Senior, but excluding all general office employees, technical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

ISSUES

The issues to be determined are 1) whether Kimberly Crane and Judith Keenan, who both hold the job position of storekeeper senior, are supervisors within the meaning of Section 2(11) of the Act; and 2) in the event that they are found not to be supervisors, should an election be conducted to determine whether they be included in a preexisting unit or in a separate unit.

POSITION OF THE PARTIES

The Petitioner argues that the storekeeper senior position is non-supervisory and that an *Armour-Globe* election is appropriate because the employees employed in that position share a community of interest with the existing bargaining unit employees. Alternatively, the Petitioner seeks a separate unit of storekeepers senior.

The Employer takes the position that Crane and Keenan, who currently hold the storekeeper senior positions, are statutory supervisors within the meaning of Section 2(11) of the Act. The Employer also takes the position that the current collective bargaining agreement, which specifically excludes the storekeeper senior position, serves as a bar to an election.

DECISION SUMMARY

⁵ See Armour & Co., 40 NLRB 1333 (1942); Globe Machine & Stamping Co., 3 NLRB 294 (1937).

I find that the individuals holding the job position of storekeeper senior are supervisors within the meaning of Section 2(11) of the Act and that the petition should therefore be dismissed.⁶

FACTS

The Employer's Ohio Supply Chain and Fleet Operations are managed by Timothy Galecki. District Storeroom Supervisor Ron Yoho, who reports directly to Galecki and works out of a facility located in Wheeling, West Virginia, oversees a district that includes store facilities in Wheeling, West Virginia,⁷ Steubenville, East Liverpool and St. Clairsville, Ohio. The store facilities act primarily as supply and fleet warehouses and distribution centers for electrical line crews to obtain materials to perform various job assignments. Judith Keenan is employed as the storekeeper senior at the Steubenville, Ohio, facility. Kimberly Crane is employed as the storekeeper senior at the St. Clairsville, Ohio, facility.

Ron Yoho testified that both Keenan and Crane are the highest-ranking employees stationed at their respective stores. A store may be unmanned; serviced by another store within its respective district; staffed by a single employee with the title of storekeeper; or be staffed with a storekeeper senior and any combination of store attendant A or store attendant B positions. Yoho testified that within his district, the East Liverpool, Ohio store is unmanned and serviced by the Steubenville, Ohio store. Judith Keenan is the storekeeper senior and Keith Gregory is the store attendant A at the Steubenville store. Kim Crane is the storekeeper senior and Heidi Kerek is the store attendant B at the St. Clairsville, Ohio store. The positions of storekeeper, store attendant A and store attendant B are included as bargaining unit positions in the current collective bargaining agreement between the Parties.

According to Yoho, the positions of store attendant A and store attendant B report directly to the storekeeper senior positions. Non-senior storekeeper positions work alone and do not have any other employees at their respective stores. Store attendant B is the lowest line of progression position at the store level. The next position up the line of progression is the store attendant A position. An employee holding the store attendant A position could then advance to either a storekeeper or storekeeper senior level position. The storekeeper position is a unit position that is subject to a bidding process. The record testimony reflects, however, that the storekeeper senior position is not a job position that is awarded based upon any collective bargaining agreement bidding procedure. Instead, the Employer's parent company, American Electric Power, solicits through its website on-line applications for any opening for the position of storekeeper senior.

Yoho testified that although he is responsible for overseeing the stores operations within his district, he does not engage in the day-to-day operations of the stores on a routine basis. According to Yoho, his office in Wheeling, West Virginia, is located approximately fourteen

⁶ In light of my conclusion that Crane and Keenan are statutory supervisors within the meaning of Section 2(11) of the Act, I find it unnecessary to undertake an **Armour-Globe** analysis.

⁷ The bargaining unit employees stationed at the Wheeling, West Virginia facility are represented by Utility Workers Local 264A, a labor organization that is not a party to the instant case.

miles from the St. Clairsville store, approximately 31 miles from the Steubenville store and approximately 55 to 60 miles from the East Liverpool Store. Yoho testified that he visits the St. Clairsville and Steubenville stores once or twice a month. Yoho also testified that Judith Keenan, in her capacity as a storekeeper senior of the Steubenville store, can direct store attendant A Keith Gregory to go to the unmanned East Liverpool store to perform work assignments.

Records provided by the Employer list detailed job descriptions for the positions of storekeeper senior, storekeeper, store attendant A and store attendant B. Included among the listed duties of a storekeeper senior are material accountability, operation of the storeroom, training and direction of the activity of the employee assigned to assist.

The undisputed record testimony of Ron Yoho establishes that the storekeeper senior oversees the receipt, warehousing and distribution of a high volume of inventory, estimated to be worth between \$1.5 and \$2 million dollars. Storekeepers senior are responsible for purchasing materials and arranging for delivery of the same in order to maintain appropriate levels of inventory and meet line crew needs. Storekeepers senior are also responsible for prioritizing distribution of those materials and using independent judgment in directing store attendants to perform assigned tasks and maximize the efficiency of store operations. If necessary, storekeepers senior may independently direct store attendants to run and deliver materials to jobsites worked by line crews.

According to Yoho, storekeepers senior have the authority to independently grant time off for personal days, to send an employee home when ill or to require that an employee stay to cover a shift if necessary. Although the record evidence did not provide any examples where the storekeepers senior at issue were involved in any formal disciplinary matters, Yoho testified that they can adjust grievances and effectively recommend disciplinary action should training, counseling and coaching prove ineffective at their respective store locations.

Storekeeper senior positions are paid at a higher wage rate than bargaining unit positions. The pay range for a store attendant A tops out at \$24.04, while the pay range for a storekeeper tops out at \$26.17. Both are bargaining unit positions. Meanwhile, the pay range for a storekeeper senior tops out at \$27.75, a 15.4 % premium over the wage rate paid to a store attendant A and a 6 % premium over a storekeeper. In the event that a storekeeper A is given a temporary promotion to cover the absence of a storekeeper senior, the temporary promotion would include a step-up in pay to the introductory storekeeper senior rate for the duration of the temporary promotion.

Storekeeper senior positions do not have the authority to hire, fire, transfer, layoff or recall employees. They do not have the authority to grant wage increases, bonuses or rewards. Storekeepers senior do not perform written evaluations of employees nor do they have private parking or special uniform privileges.

Daniel Lyon, Business Manager for the Petitioner, testified during cross-examination that he directly participated in the negotiation of three local agreements and the Master Agreement

with the Employer during his nine-plus years in that capacity. All four of those agreements resulted in the specific exclusion of the storekeeper senior position from the bargaining unit.

In its brief, the Petitioner acknowledges that the position of storekeeper senior is, by agreement of the parties, excluded from the existing bargaining unit. It further admits by inference that this classification is not included in the majority of the other bargaining units in the AEP system. The Petitioner argues, however, that there are four bargaining units in the system in which the storekeeper senior is included and that the classification in those units is similar to that sought for inclusion here. It also maintains, in conclusory terms, that the storekeeper senior does not meet any of the criteria of a statutory supervisor.

ANALYSIS

Section 2(3) of the Act excludes from the definition of “employee” an individual employed as a “supervisor.” Section 2(11) of the Act defines supervisor as follows:

The term “supervisor” means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The definition of Section 2(11) is phrased in the disjunctive such that the possession of any one of the enumerated supervisory criteria or the authority to effectively recommend it, so long as the performance of that function is not routine and requires independent judgment, provides a sufficient basis for finding supervisory authority. **Clark Machine Corp., 308 NLRB 555 (1992); Bowne of Houston, Inc., 280 NLRB 1222, 1223 (1986).** The Board analyzes the enumerated statutory indicia on a case-by-case basis to determine the supervisory status of employees. In addition, the party asserting supervisory status has the burden of proving that the individual is a supervisor. **NLRB v. Kentucky River Community Care, 532 U.S. 706 (2001).** Moreover, mere assertions of authority are not sufficient to establish supervisory status. **Chevron U.S.A., 309 NLRB 59 (1992).** Finally, conclusory evidence, “without specific explanation that the [disputed person or classification] in fact exercised independent judgment,” does not establish supervisory authority. **Sears, Roebuck & Co., 304 NLRB 193 (1991).**

In the instant case, the record testimony establishes that Keenan and Crane possess various indicia of supervisory authority described in Section 2(11) of the Act. Notably, Yoho testified, without contradiction, that storekeepers senior can and do utilize independent judgment to responsibly assign work, grant employee requests for personal days and send sick employees home. Specifically, Yoho testified that Keenan and Crane prioritize assignments for their respective store attendants to assist with inventory verification and the loading and unloading of materials used by line crews.

Yoho also testified that storekeepers senior can adjust grievances and effectively recommend discipline. Specifically, Yoho recalled one instance where Crane, without

consultation with Yoho, handled a potential disciplinary problem at the St. Clairsville store. Keenan and Crane are the highest-ranking employees on site at their respective stores, the importance of which is magnified by the fact that Yoho is physically present at the stores only a few times per month. While Keenan and Crane may have frequent interaction with Yoho, they are essentially responsible for the direction of work performed at their respective stores.

On the basis of the parties' testimony and supporting documentation, I agree that Keenan and Crane, while performing their duties in their positions as storekeepers senior, exercise supervisory authority as defined in Section 2(11) of the Act. Thus, they may not be appropriately included in the existing bargaining unit or constitute a unit of their own.

Accordingly, it is **ORDERED** that the petition in this case be dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by January 6, 2011. If a party wishes to file a request for review, guidance for E-filing can be found on the National Labor Relations Board website at www.nlr.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Dated at Cleveland, Ohio this 23rd day of December, 2010.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8